

Message Text

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ACTION EUR-25

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SUBJECT: FOREIGN INVESTMENT REVIEW ACT (FIRA) BECOMES LAW

1. WITH SENATE APPROVAL OF HOUSE VERSION OF FIRA AFTERNOON OF DECEMBER 12 AND ROYAL ASSENT A FEW HOURS LATER, CANADA'S FIRST MAJOR LEGISLATIVE EFFORT TO CONTROL FOREIGN INVESTMENT BECAME LAW. ONE OF ITS PROVISIONS REQUIRES THAT IT ENTER INTO FORCE WITHIN 180 DAYS OF FINAL ENACTMENT, I.E. NOT LATER THAN JUNE 10, 1974; THUS BY NEXT SUMMER ALL PROPOSED TAKEOVERS OF MAJOR CANADIAN FIRMS WILL BE SUBJECTED TO GOC APPROVAL. SUMMARY OF MAJOR POINTS OF FIRA FOLLOW. COPIES OF FINAL TEXT OF ACT AND EMBASSY COMMENT WILL BE FORWARDED BY AIRGRAM.

2. FIRA ESTABLISHES A SCREENING AGENCY (FOREIGN INVESTMENT REVIEW AGENCY) TO DETERMINE WHETHER THE PROPOSED TAKEOVER OF A MAJOR (I.E. ASSETS OF C\$250,000 OR SALES OF C\$3,000,000) CANADIAN FIRM BY A "NON-ELIGIBLE" PERSON WILL BRING "SIGNIFICANT BENEFIT" TO CANADA. THE SCREENING AGENCY ADVISES THE MINISTER OF INDUSTRY, TRADE AND COMMERCE REGARDING THE ACCEPTABILITY OF THE TAKEOVER AND THE MINISTER SUBMITS
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A RECOMMENDATION TO THE CABINET WHICH ISSUES AND ORDER

IN COUNCIL APPROVING OR DENYING THE TAKEOVER. IF NO ORDER IS ISSUED DENYING THE TAKEOVER OR REQUESTING FURTHER REPRESENTATIONS FROM APPLICANT WITHIN 60 DAYS OF FILING THE APPLICATION WITH THE AGENCY, THE TRANSACTION IS AUTOMATICALLY APPROVED.

3. IN DETERMINING "SIGNIFICANT BENEFIT", ACT SPECIFIES THAT FOLLOWING CRITERIA BE CONSIDERED BY SCREENING AGENCY: (A) EFFECT ON ECONOMIC ACTIVITY IN CANADA INCLUDING EMPLOYMENT, RESOURCE PROCESSING, UTILIZATION OF PARTS, COMPONENTS AND SERVICES PRODUCED IN CANADA AND EXPORTS; (B) DEGREE OF CANADIAN PARTICIPATION; (C) EFFECT ON PRODUCTIVITY, INDUSTRIAL EFFICIENCY, TECHNOLOGICAL DEVELOPMENT, PRODUCT INNOVATION AND PRODUCT VARIETY IN CANADA; (D) EFFECT ON COMPETITION; AND (E) COMPATIBILITY WITH "NATIONAL INDUSTRIAL AND ECONOMIC POLICIES, TAKING INTO CONSIDERATION INDUSTRIAL AND ECONOMIC POLICY OBJECTIVES ENUNCIATED BY THE GOVERNMENT OR LEGISLATURE OF ANY PROVINCE LIKELY TO BE SIGNIFICANTLY AFFECTED..." APPLICANTS MAY PROVIDE WRITTEN UNDERTAKINGS TO CONVINCE SCREENING AGENCY OF "SIGNIFICANT BENEFIT"; HOWEVER IF TRANSACTION IS APPROVED, COMPLIANCE WITH SUCH UNDERTAKING CAN BE OBTAINED THROUGH THE COURTS. SINCE "SIGNIFICANT BENEFIT" IS POLICY (NOT LEGAL) QUESTION, ADVERSE DECISION BY SCREENING AGENCY ON APPLICATION FOR TAKEOVER CANNOT BE APPEALED TO COURTS.

4. "NON-ELIGIBLE PERSONS" FOR PURPOSES OF THE ACT ARE: (A) ALL FOREIGNERS, INCLUDING CANADIANS WHO HAVE NOT TAKEN OUT CANADIAN CITIZENSHIP WITHIN ONE YEAR OF BECOMING ELIGIBLE; (B) FOREIGN GOVERNMENTS; AND (C) FOREIGN CONTROLLED CORPORATIONS. A FOREIGN CONTROLLED CORPORATION IS FURTHER DEFINED AS : (A) ONE WHOSE SHARES ARE PUBLICLY TRADED AND 25 PERCENT OF VOTING STOCK HELD BY FOREIGNERS; (B) ONE WHOSE SHARES ARE NOT PUBLICLY TRADED AND 40 PERCENT OF VOTING STOCK HELD BY FOREIGNERS; (C) ONE IN WHICH 5 PERCENT OF THE VOTING STOCK IS HELD BY A SINGLE FOREIGN INDIVIDUAL OR GOVERNMENT. THE PRECISE WORDING OF DEFINITION IS ALSO DESIGNED TO PRECLUDE EVASION BY FOREIGNERS

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OPERATING THROUGH TRUSTS.

5. ACT PROVIDES FOR EXTENSION OF SCREENING CRITERIA TO ESTABLISHMENT OF ANY NEW BUSINESS IN CANADA. THAT SECTION WILL ENTER INTO FORCE SEPARATELY AT TIME TO BE DETERMINED BY GOC WITHOUT FURTHER REFERENCE TO PARLIAMENT. OFFICIALS HAVE STATED PUBLICLY THAT SCREENING OF NEW BUSINESSES LIKELY TO BEGIN ABOUT ONE

YEAR FOLLOWING THAT OF TAKEOVERS.

6. PENALTIES FOR NON COMPLIANCE RANGE FROM C\$5,000-
10,000 FINE PLUS SIX MONTHS IMPRISONMENT.
JOHNSON

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